TOH KONG JOO

v.

PENGUASA PERUBATAN, HOSPITAL SULTANAH AMINAH, JOHOR BAHRU

HIGH COURT MALAYA, JOHOR BAHRU
ZAKARIA YATIM J
[CRIMINAL MISCELLANEOUS APPLICATION NO. 54-6 OF 1987]
11 FEBRUARY 1990

ADMINISTRATIVE LAW: *Application for copy of own medical report - Circular by Health Ministry - Refusal by hospital - Request by solicitors - Necessity of prior permission of police - Referred to Director General of Health - Administrative guideline - Subsidiary legislation - Medical Act 1971 - Powers of Directors General - Whether hospitals bound by circular - Repeat of provisions of existing law - Public document - Sections 74, 76 Evidence Act - Public officer - Interpretation Act 1967 - Public services - Article 132(1) of Federal Constitution - Right to inspect document - Protection of own interest.*

CONSTITUTIONAL LAW: *Article 132(1) of Federal Constitution.*

STATUTORY INTERPRETATION: *'Public document' - Section 74 Evidence Act - 'Public officer' - Interpretation Act.*

The applicant was arrested by the Johore Bahru police and remanded in police custody. He suffered injuries which he alleged were a result of beatings by the police during interrogation while he was in police custody. The Court released the applicant on bail pending trial on the charges with which he was charged.

The applicant's solicitors wrote to the hospital requesting a copy of the applicant's medical report. The solicitors were advised that as a result of circular letter dated 11 June 1987, which was issued by the Ministry of Health, the applicant was required to get prior permission of the police in writing before the medical report could be issued.

The applicant's solicitors then referred the matter to the Director-General of Health Malaysia. The defendant explained that the circular letter was only an administrative guideline for his own medical officers.

The question for determination by the Court was whether the medical report of the applicant was a public document and whether the applicant has a right to purchase a copy of the said medical report on payment of the prescribed fee.

Held:

[1] The circular letter is not a subsidiary legislation made under the provisions of the Medical Act 1971. Under s. 76 of this Act, only the Medical Counsel, with the approval of the Minister, may make rules and regulations under the Act.

[2] The medical report in question is a public document - s. 74 Evidence Act. A public officer and public office is defined in the Interpretation Act. Public services are enumerated in Article 132(1) of the Federal Constitution.

[3] Members of the medical service form part of the general public service and come under the jurisdiction of the Public Services Commission. Therefore the report of their medical examinations are public documents.

[4] Although medical reports are public documents, not every person has access to it or has the right to ask for copies of the documents.

[5] If a person has a right to inspect a document, he should be supplied with a copy of the document on payment of the prescribed fee. A person has the right to inspect a document if he has an interest in the document and the inspection is necessary for the protection of his own interest.

[6] On the facts of this case, the applicant has an interest in his own medical report and it is obvious that he needs a copy of the report to protect his own interest especially when he has made allegations that he was beaten by the police. In the circumstances he is entitled to be supplied with a copy of his medical report without any prior written approval from the police.

[Orders sought by applicant granted.]

Cases referred to:
Anthony Gomez v. Ketua Polis Daerah Kuantan [1977] 2 MLJ 24
Khoo Siew Bee & Anor. v. Ketua Polis Kuala Lumpur [1979] 2 MLJ 49

Legislation referred to:
Criminal Procedure Code, s. 399
Evidence Act 1950, ss. 74, 76
Federal Constitution, art. 132(1)
Medical Act 1971, s. 36

Other Sources referred to:
An Introduction to the Constitution of Malaysia, Tun Mohamed Suffian bin Hashim, 2 Edn., p. 133

For the applicant - R.K. Menon; M/s. R.K. Menon & Company
For the respondent - Kamarrulzaman bin Abdul Jalil, DPP

JUDGMENT

Zakaria Yatim J:

In this notice of motion, the applicant, one Toh Kong Joo is seeking the order of the Court:

(i) for a declaration that the medical report on the applicant Toh Kong Joo (Nric No. 5692047) bearing reference HSA/LP/1364/87 is a public document;

(ii) for a declaration that the applicant, the said Toh Kong Joo, to whom such said medical report relates, has a right to purchase a copy of the said medical report on payment of the prescribed fee;

(iii) that the applicant, the said Toh Kong Joo, be furnished with a copy of his medical report prepared by the Hospital Sultanah Aminah, Johore Bahru, upon payment of the prescribed fee; and

(iv) that the costs of his application be paid by the respondent to him.

In his affidavit in support of the notice of motion, he stated that he was arrested by the Johore Bahru Police and remanded in police custody. While he was in police custody he was interrogated by the police. He was accused of being involved in cases of thefts of motorcars. He denied the allegation and he was subjected to beatings. According to him he suffered injuries as a result of being beaten by the Police while in custody. He was then sent to Hospital Sultanah Aminah for treatment.

Subsequently he was brought to the Johor Bahru Magistrate's Court where he was charged with two charges. No particulars of the charges were mentioned in the affidavit. The applicant claimed trial to the two charges and the Court released him on bail pending his trial.

On his instruction, his solicitors, wrote to Hospital Sultanah Aminah for a copy of the medical report pertaining to his medical examination and treatment. After a series of correspondence, the applicant's solicitors received a letter from the medical superintendent of the Hospital. The letter, dated 19 October 1987, referred to a circular letter dated 11 June 1987 issued by the Ministry of Health, and stated that according to the circular letter the applicant was required to get the prior permission of the Police in writing before the medical report could be issued to him. The relevant part of the circular is quoted below:

> 4. **Kes-kes Polis yang berupa jenayah.**
>
> 4.1 Laporan-laporan perubatan bagi kes-kes jenayah yang dirujuk oleh pihak-pihak polis seperti pembunuhan, luka akibat tembakan, rogol dan lain-lain hanya boleh dikeluarkan kepada pegawai polis yang menjalankan penyiasatan ke atas kes itu sahaja. Ini adalah untuk membolehkan pegawai polis menjalankan siasatan mereka dan bagi mengelakkan sebarang kejadian memalsukan kenyataan-kenyataan yang diperlukan oleh pihak polis.
>
> 4.2 Mana-mana pihak, termasuk pesakit, yang memohon untuk mendapatkan laporan-laporan tersebut hendaklah dinasihatkan untuk mendapatkannya daripada pihak polis. Walaubagaimanapun, pengarah hospital, penguasa perubatan dan pegawai perubatan y/m hospital boleh mengeluarkan laporan perubatan kepada lain-lain pihak jika pihak polis memberi kebenaran bertulis.

The applicant, through his solicitors referred the matter to the Director-General of Health Malaysia in Kuala Lumpur. In his reply dated 16 June 1988 the Director-General explained that the circular letter was only an administrative guideline for his own medical officers.

It is clear that the circular letter is not a subsidiary legislation made under the provisions of the Medical Act 1971. Indeed the Director-General has no power to make rules or regulations under the Act. Under s. 36 of the Act, only the Medical Counsel may, with the approval of the Minister, make regulations in respect of matters listed in subsection (2) of that section.

Since the circular letter is not a subsidiary legislation and since it is only a guideline the medical officer at Hospital Sultanah Aminah is not bound by the circular letter unless the circular letter repeats the provisions of any existing law. But if the circular letter is in the form of administrative *directive,* the medical officer has to comply with the directive otherwise disciplinary action can be taken against him.

The question that arises here is whether para. 4 of the circular letter quoted above reflects the provisions of existing law? In my opinion a medical officer has to comply with para. 4.1 because the medical reports form part of the police investigation in respect of criminal offences. An accused person will be supplied with a copy of the medical report if the prosecution intends to use it. Under s. 399 of the Criminal Procedure Code, if the public prosecutor intends to give in evidence such report he shall deliver a copy of the report to an accused person not less than ten clear days before the commencement of the trial.

Paragraph 4.2 of the circular letter is more general in nature. The question is whether it is required by law that the applicant must obtain the prior permission of the police before he can be supplied with a copy of the medical report?

The medical report in question is a public document. Section 74 of the Evidence Act provides that public documents are documents forming the acts or records of the acts of "... public officers, legislative, judicial and executive, whether Federal or state ..." A "public officer" is defined in the Interpretation Act 1967 as a person lawfully holding, acting in or exercising the functions of a public office; and "public office" is defined in the same Act as an office in any of the public services. The public services are enumerated in Article 132(1) of the

Federal Constitution and includes the general public service of the Federation. The medical service is not expressly provided in Artticle 132, but members of the medical service form part of the general public service and come under the jurisdiction of the Public Services Commission. See Tun Mohamed Suffian bin Hashim, *An Introduction to the Constitution of Malaysia,* 2 Edn., p. 133.

Since medical officers are members of the public service, they are therefore public officers and the reports of their medical examinations are public documents. Although medical report are public documents, not every person has excess to it or has the right to ask for copies of the documents. Section 76 of the Evidence Act states:

> Every public officer having the custody of **a public document which any person has a right to inspect** shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate, written at the foot of the copy of the document or part thereof, as the case may be, and the certificate shall be dated and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorised by law to make use of a seal, and the copies so certified shall be called certified copies.
> (Emphasis added)

It is clear from the section quoted above that if a person has the right to inspect a document then he should be supplied with a copy of the document on payment of the prescribed fee. A person has the right to inspect a document if he has an interest in that document and the inspection is necessary for the protection of his own interest. See *Anthony Gomez v. Ketua Polis Daerah Kuantan* [1977] 2 MLJ 24 and *Khoo Siew Bee & Anor. v. Ketua Polis Kuala Lumpur* [1979] 2 MLJ 49.

In the present case the applicant definitely has an interest in his own medical report and it is obvious that he needs a copy of the report to protect his own interest especially when he has made allegation that he was beaten by the police. In the circumstances he is entitled to be supplied with a copy of his medical report without any prior written approval from the police. The medical officer concerned or Hospital Sultanah Aminah is obliged to supply a copy of the report as requested by the applicant on payment of the prescribed fee.

For the reasons stated above, I make the following order:

(1) the medical report pertaining to the examination of the applicant is a public document.

(2) The applicant is entitled to purchase a copy of the said medical report on payment of the prescribed fee.

(3) Hospital Sultanah Aminah, Johore Bahru shall supply a copy of the said report to the applicant or his solicitors upon payment of the prescribed fee.

I order that the costs of this application be costs in the cause.

Also found at [1990] 1 CLJ 1001